

SEALASKA CORP.

IBLA 88-347

Decided July 15, 1993

Appeal from a decision of the Alaska State Office, Bureau of Land Management, denying historical place selection application AA-10517.

Reversed.

1. Alaska Native Claims Settlement Act: Conveyances: Cemetery Sites and Historical Places--National Historic Preservation Act: Generally

Sec. 14(h)(1) of the Alaska Native Claims Settlement Act, 43 U.S.C. § 1613(h)(1) (1988), authorizes the Secretary of the Interior to withdraw and convey existing historical places and cemetery sites to the appropriate regional corporation. BLM properly grants an application for a historical place when the record establishes that the site is a distinguishable tract of land or area upon which occurred a significant Native historical event, which is importantly associated with Native historical or cultural events or persons, and meets the criteria set forth at 43 CFR 2653.5.

APPEARANCES: Stephen F. Sorensen, Esq., Juneau, Alaska, for appellant; Dennis J. Hopewell, Esq., Deputy Regional Solicitor, Office of the Regional Solicitor, Anchorage, Alaska, for the Bureau of Land Management and the Bureau of Indian Affairs.

OPINION BY ADMINISTRATIVE JUDGE IRWIN

Sealaska Corporation (Sealaska) has appealed from a decision of the Alaska State Office, Bureau of Land Management (BLM), dated March 7, 1988, rejecting historical place application AA-10517, filed on December 12, 1975, pursuant to section 14(h)(1) of the Alaska Native Claims Settlement Act (ANCSA), 43 U.S.C. § 1613(h)(1) (1988), for the Sumdum Village Site. The application described the site as a "permanent village and cannery site" located "along Sanford Cove on Endicott Arm" within secs. 29, 30, 31, and 32, T. 48 S., R. 74 E., Copper River Meridian, Alaska.

Wilsey & Ham, Inc., consultants from Seattle, Washington, located and examined the site for Sealaska on June 12, 1975. Its report on the site, attached to Sealaska's application, stated that there were "[s]everal old collapsed shacks with much junk nearby, and a large number of pilings in groups can be found throughout the length of the site. All seemed to be

about 50 years old." Further, Wilsey & Ham stated that "[n]othing distinctively native could be identified here. Since it was difficult to identify which part was an actual village, the whole formerly inhabited area was included in the survey.

BLM forwarded Sealaska's application to the ANCSA Projects Office of the Bureau of Indian Affairs (BIA) for investigation. BIA's investigative findings are set forth below:

Field investigation began on May 15, 1979 and was completed on May 17, 1979 by BIA-ANCSA field investigators Marquam George and Larry Arden Woodall under the supervision of Larry Roberts. Cooperative Park Studies Unit (CPSU) personnel consisted of Russell Sackett and Carol Rawlinson.

Sumdum Village consists primarily of historic era mining and milling remains on a level, former beach area within Sanford Cove on the Endicott arm of Stephens Passage. * * * In the past, the area was used seasonally as a camp by the Sumdum clan of the Tlingit Indians. No aboriginal cultural remains were encountered during BIA-ANCSA and CPSU [Cooperative Park Studies Unit] field investigations. Historically, the site has been utilized by a series of mining companies and individuals (refer to Appendix H-1). Generally, the site can be considered in use historically between circa 1890 through 1940. Presently, there is no Native traditional activities or mining practiced on the demarcated site.

Pre-field investigations revealed that a portion of the applied for site was located on Mineral Survey 268, which consequently was excluded from consideration under AA-10517. Additionally, portions of the site have been excluded under a lode mining claim by Resource Associates of Alaska, Inc., on or about June 23, 1978. Furthermore, the ANCSA site which excludes mineral site 268 is entirely within the Tongass National Forest Wilderness application AA-23139.

* * * * *

Sumdum Village consists of a substantial mining and milling locale. Surface materials, constituting the site, include decayed and collapsed log and frame structures, rusting metal equipment, wood pilings, and several concentrations of glass bottles and tin cans. Historically, the site can be tentatively dated as being in use circa 1878-1940. Early use of the site is not supported in ethnographic or historical literature.

(BIA Report of Investigation at 9-10).

As noted, CPSU cooperated with the ANCSA Projects Office in investigating the Sumdum Village Site. In the opinion of Russell Sackett, CPSU field archeologist who took part in the investigation, "Sumdum qualifies * * *

for ANCSA 14(h)(1) selection by Sealaska Corporation" (Report of Investigation, Exh. 2, at 46). He states that "[e]thnic information and historic documentation do not support the existence of a Native village at this site," and that "[t]he main Sumdum Tlingit village in Endicott Arm was located at Powers Creek, below Sumdum and it was the Powers Creek people who used the area." Id.

Sackett describes the history of the mining community which developed at the Sumdum Village Site, beginning in placer gold prospecting and the establishment of a trading post, through its abandonment in the mid-1940's. He states "[w]ith the establishment of the mine and town, the Sumdum Tlingit living on Endicott Arm were drawn to the community for employment and the services offered, abandoning their traditional villages." Id. at 47. Sackett states that "Sumdum has significance in its association with early mining activities in Southeast Alaska and the impact it had on the Native population and that "[t]he mining activities at Sumdum brought the Natives into direct contact with western culture and brought about acculturation." Id. at 48. In addition, he states that "[t]he site offers excellent archeological research potential for understanding life and conditions in a mining community." Id.

The November 5, 1980, report of the BIA claims examiner noted the CPSU recommendation that the site qualify as a historic place "[b]ased upon the impact the mining company had on the Native population," but concluded that although the BIA has determined that Sumdum Village site exists, * * * it did not meet the eligibility requirements for certification as a historic place." Id. at 5. The claims examiner recommended that BIA issue a certificate of ineligibility. Accordingly, BIA issued a certificate of ineligibility for the Sumdum Village Site, listing the following reasons:

1. Historic documentation does not support the existence of a Native village within the site.
2. The site did not yield anything distinctively Native in the archaeological findings.
3. The site is not associated with the tradition and cultural events that have made a significant contribution to the history of the Sumdum Tlingit.
4. The site was not a birthplace of an historical figure of outstanding importance to the Sumdum Tlingit.

On July 27, 1987, Sealaska submitted to BLM a study prepared by the Chilkat Institute entitled "Assessment of Sealaska Corporation Historical Site Applications Under the Alaska Native Claims Settlement Act 14(h)(1)" (the "Assessment"). The purpose of this study was to present new information to demonstrate that BIA's certificates of ineligibility pertaining to 12 selection applications, including the application for the Sumdum Village Site, were based upon incomplete investigations and incomplete information. Sealaska requested that BIA prepare a supplemental

report for each of the twelve sites, "which incorporates new site investigations and that a re-determination of historical eligibility be made in each case. Further substantiation in oral traditions should also be compiled from knowledgeable individuals" (Letter dated July 22, 1987, from Sealaska to BLM).

The Chilkat Assessment states that "[h]istorical accounts establish that the [Sumdum Village] site was a traditional fishing settlement prior to the intensive mining activity which commenced in 1893" (Chilkat Assessment at 101).

[These] accounts establish that gold deposits attracted whitemen into the area at an early date, which altered the traditional use and possession of the area in the vicinity of Sumdum glacier, and later across the bay at the applied-for site. In the 1890's, a large mining facility was developed across the bay at the outlet of a salmon stream, at the applied-for site of Sumdum Village. * * * The mining camp was on the beach in Sanford Cove, which was the site of "an ancient fish camp of the Sumdum Indians." * * * As happened earlier across the bay, a conflict was developed over the use of the site by miners. "Early in 1897 Governor James Shakely wrote to an agent of the company [Bald Eagle Mining Company] that he had received complaints that white men were depriving the Natives of their land, houses and property in the district. The governor instructed the company to purchase what land it needed if it was going to continue to work there." * * * The Bald Eagle mine employed 12 to 20 men in 1894. By 1900, the population of the settlement reached 137, the majority of which were Indians. This figure included 40 miners, and probably some of their families. * * * The large number of Indians indicates that groups inhabiting dispersed Sumdum settlements became centralized at Sumdum village during this period. The mine continued to operate until 1903, after which a majority of the population moved out of the region.

Id. at 102-03.

BLM's March 7, 1988, decision rejected Sealaska's application, reciting the reasons given in BIA's certificate of ineligibility.

On appeal, Sealaska argues that the Sumdum Village Site is of "major historical importance" in that it "represents the displacement of this Native group from their fishing site because of the intrusion of mining" (Additional Statement of Interest and Request for Hearing at 5-6). In Sealaska's opinion, the resulting conflict which developed "is a significant historical event for this group in particular, and for Southeast Natives as a whole," and "[i]t is one of the few well documented instances of Native resistance to territorial incursions by miners, and of official recognition of traditional Tlingit property rights." 6. Thus, asserts Sealaska, when the mine ceased operation in the early 1900's, the majority of the population moved out of the region, marking the period when the Sumdum Tlingit "moved from a traditional social and economic lifestyle

to one which adopted and adjusted to that system introduced by the white man." Id. In addition, Sealaska contends the archeological significance of the Sumdum Village Site "lies in the evidence of socioeconomic transformation of the Native society in to a more modern form." Id. at 7.

BLM and BIA answer that "[w]hile [they] recognize the possibility of a site being eligible due to its significance in the acculturation process, the record in this case sufficiently establishes the existence of a non-qualifying subsistence use site" (Additional Answer at 4). The agencies attach Exhibit 1, an October 1980, opinion of the Office of the Regional Solicitor entitled "Effect of 43 CFR 2653 on ANCSA 14(h)(1)." This memorandum states:

The general Native participation in mining and related activities was, however, quite widespread and only became specific when it ceased to be general Native involvement and became an identifiable occurrence on an ascertainable tract of land. Thus, while the fact that Alaskan Natives engaged in mining and related activities does not, in and of itself, constitute anything a 14(h)(1) historical place, these activities may be considered and may be a factor in finding some specific places to be historical places. * * * [T]he crucial issue is whether the applicable regulatory criteria can be satisfied.

(Exh. 1 at 5).

[1] Section 14(h)(1) of ANCSA, 43 U.S.C. § 1613(h)(1) (1988), authorizes the Secretary to convey fee title to certain places to the appropriate regional corporation under certain circumstances and subject to various restrictions. A "historical place" is defined at 43 CFR 2653.0-5(b) as

a distinguishable tract of land or area upon which occurred a significant Native historical event, which is important to the history of the area, or which is associated with Native historical or cultural events or persons, or which was subject to sustained historical Native activity, but sustained Native historical activity shall not include hunting, fishing, berry-picking, wood gathering, or roasting, or husbandry. However, such uses may be considered in the evaluation of the sustained Native historical activity associated with the tract or area.

The criteria for determining the quality of significance in Native history or culture are set out at 43 CFR 2653.5-5(a) and provides:

For purposes of evaluating and determining the eligibility of properties as historical places, the quality of significance in Native history or culture shall be considered to be present in places that possess integrity of location, design, setting, materials, workmanship, feeling and association, and

- (1) That are associated with events that have made a significant contribution to the history of Alaskan Indians, Eskimos or Aleuts, or
- (2) That are associated with the lives of persons significant in the past of Alaskan Indians, Eskimos or Aleuts, or
- (3) That possess outstanding and demonstrably enduring symbolic value in the traditions and cultural beliefs and practices of Alaskan Indians, Eskimos or Aleuts, or
- (4) That embody the distinctive characteristics of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic values, or
- (5) That have yielded, or are demonstrably likely to yield information important in prehistory or history.

In our view, the Sumdum Village site meets the definition and the criteria for a historical place. There is no dispute that the site is a distinguishable tract of land and therefore meets the first element of the definition of historical place. As to the second element of the definition -- whether the site is one "upon which occurred a significant Native historical event, or cultural events or persons" -- in United States Forest Service, 101 IBLA 38 (1988), BLM argued that "the process of acculturation, as discussed more fully in Exhibit 1, is a significant and important Native event that should be recognized as especially appropriate historical places like Fort Tongass." Id. at 42. In that case, "Fort Tongass was the first military post, customs house, and trading center in Alaska and was part of the process of acculturation of the Tlingit people into the American economic system," and "the proximity of Fort Tongass to Tongass Island Village had immediate cultural effects on the Tantakwan clan of Tlingits inasmuch as it uniquely increased trading opportunities and contact between Natives and non-Natives." Id. We think the record in this case establishes that the Bald Eagle Mine had a similar influence on the surrounding area and at the Sumdum Village site and demonstrates the existence of more than "a non-qualifying subsistence use site."

Concerning what BLM refers to as the "preliminary criteria" of 43 CFR 2653.5(d), *i.e.*, whether the place possesses characteristics of location, design, setting, materials, workmanship, feeling and association," BLM argues that "no Tlingit historical remains were found on the site" and that "[a]ny physical evidence of past Tlingit use was obliterated by the mining activities that occurred around the turn of the century * * *. Thus there is nothing on or about the Sumdum site relating to 'Native history or culture' that can possess the characteristics required to make it an ANCSA historical place" (Answer at 13). On the other hand, the remains at the site reflect the integrity of a settlement, primarily of Natives, engaged in mining as it was conducted in the late 19th century. The site is associated with events that made a significant contribution to the history of Alaskan Indians and

is likely to yield information that is important to their history, thus meeting two of the five alternative requirements of 2653.5(d).

We conclude that the record supports Sealaska's application for a grant of the Sumdum Village site as an historic site under section 14(h)(1).

Therefore, in accordance with the authority delegated to the Interior Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, BLM's March 7, 1988, decision rejecting the application is reversed.

Will A. Irwin
Administrative Judge

I concur:

James L. Burski
Administrative Judge